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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Terri K. Taylor

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EXAMINER

RAMIREZ, JOHN FERNANDO

ART UNIT

PAPER NUMBER

3737

NOTIFICATION DATE

DELIVERY MODE

05/01/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@nutter.com

Office Action Summary	Application No. 10/762,963	Applicant(s) TAYLOR ET AL.	
	Examiner JOHN F. RAMIREZ	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 1-19, 35, 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-34, 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see remarks, filed 01/17/08, with respect to claims 20-34 rejected under 35 U.S.C. 101 and 112 second paragraph have been fully considered and are persuasive. Therefore these rejections have been withdrawn. The examiner of record has acknowledged the terminal disclaimer filed to obviate the nonstatutory obviousness double patenting rejection.

However, upon further consideration, the following office action is provided in order to expedite the prosecution of this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-29 and 32, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Porat et al. (US 6,432,050).

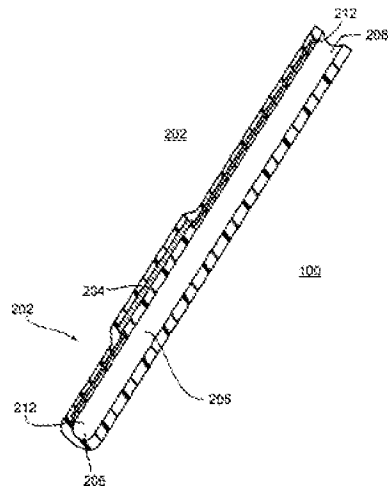


Fig. 12

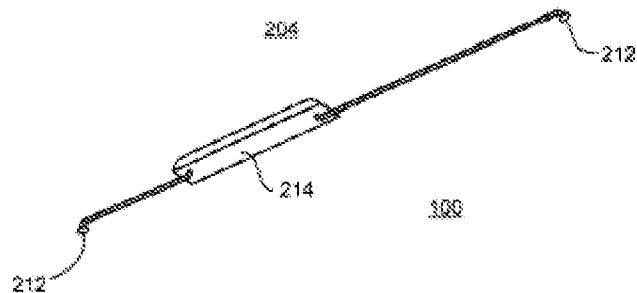


Fig. 13

The Porat et al. reference disclose an acoustic monitoring device (204) for verifying the pressure setting of a valve mechanism in an implantable device (see abstract, col. 19, lines 40-65), comprising: a transmitter (214) configured to generate an energy field sufficient to effect movement of the valve mechanism of the implantable device (see figures 6-9); and an acoustic sensor (212) electronically coupled to the transmitter (214) for detecting acoustic signals (see abstract, see Fig. 13, see col. 19, lines 40-65), wherein the transmitter (214, 114) creates electrical power for energizing the sensors (see Fig. 10, col. 15, lines 39-63), further including a housing having a top surface, a bottom surface, and a central opening (205) extending therethrough for containing the transmitter (214), including a tubular coupling member (205) extending through the central opening, wherein the tubular coupling member is configured to contact a patient's skin (208, see col. 19, lines 15-40), wherein the acoustic sensor is selectively disposed within the tubular coupling member as shown in Figure 12, wherein the acoustic sensor is electromagnetically isolated from the transmitter (see figure 13

and col. 19, lines 55-65), further including mechanical isolating pads surrounding the inner surface of the tubular coupling member (see figure 12), wherein the sensor (212) is seated on top of the tubular coupling member (see sensors mounted on the upper surface of tubular area 205), and including a digitizing filter, and a data storage unit for transmitting any detected acoustic signals to a programmer for analysis (see Fig. 10, see col. 19, lines 65 – col. 20, line 26).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-31, 33-34, 36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porat et al. (US 6,432,050) in view of Ericson et al. (US 5,533,733) in further view of Greeninger et al. (US 6,082,367).

Porat et al. teaches all the limitations of the claimed subject matter except for mentioning specifically, a power source for driving the energy field, further comprising means for wireless communication between the acoustic monitoring device and the programmer, wherein the means for wireless communication comprises a wireless communication transmitter connected to the transmitter of the acoustic monitoring device, wherein the device includes a microprocessor that translates any detected acoustic signals into information for determining the success or failure of the

adjustment cycle, wherein the microprocessor classifies the acoustic signals into signals indicative of movements and signals indicative of positions, wherein the microprocessor compares the actual streams of acoustic signals to an expected stream of acoustic signals to determine the success or failure of the adjustment cycle. However, in the same field of endeavor, Ericson et al. teach an implantable device for cerebrospinal fluid pressure monitoring that can be coupled to existing fluid shunting systems that uses a wireless transmission (see abstract), and receives power from an internal source (see Fig. 5). Moreover, Greeninger et al., teach an implantable medical device that uses a microprocessor that is programmed for different operating parameters, operating modes and capabilities of monitoring varieties of physiologic conditions and electrical signals (see abstract). Therefore, it would have been obvious to one of ordinary skill at the time the invention was made to have modified the device disclosed by Porat et al., in light of the teachings of Ericson et al. and Greeninger et al., in order to provide a monitoring device with programmable capabilities that would avoid the possibility of unrecognized signals of life-threatening conditions in the monitored patient.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN F. RAMIREZ whose telephone number is (571)272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/
Supervisory Patent Examiner, Art
Unit 3737

/J. F. R./
Examiner, Art Unit 3737